

**QUESTIONS FROM SUBCOMMITTEE CHAIR LINDA SANCHEZ
FOR DANIEL BOGDEN**

1. Please describe any conversations you had with officials at the Department of Justice relating to your termination as U.S. Attorney that occurred after the notification you received on December 7, 2006. Your description of each conversation should include, but is not limited to, who initiated each call, who participated, and what was said by whom. In addition, if you discussed any of these calls with any of the other former U.S. Attorneys who testified at the hearing, please describe any of these conversations.

I received a telephone call from EOUSA Director Michael Battle on Thursday morning, December 7, 2006. The call from Director Battle was fairly brief and in that telephone call Director Battle informed me that I served as a Presidential appointee and that it was time for me to step down. The only participant in the telephone call was Director Battle. He had few other details about the reason for the call other than to note that we all serve at the pleasure of the President. When pressed on the decision, he alluded to the fact that the decision had been made by "higher ups" and that he had not been privy to the reason for the request. When I pressed him on the decision, he stated that they wanted my office to move in another direction but could give few details as to what that direction was, who or why. I asked him who I could talk to about the request and to learn more about why the decision had been made concerning me and he stated, he had thought about who he would speak to if he had received such a call and told me he would try calling the Deputy Attorney General (DAG), Paul McNulty.

I attempted to contact the DAG's office but was unable to reach DAG McNulty that day but left a message that I would like to speak with him. Later that day (December 7, 2006), I reached out to and attempted to contact acting Associate Attorney General (AAG) William Mercer. AAG Mercer, like DAG McNulty and I, had all served as United States Attorneys under Attorney General John Ashcroft and had been part of the group of United States Attorneys sworn in as USAs in 2001. I called acting Associate Attorney General Mercer and had a lengthy conversation with him. The only participant in the telephone call was AAG Mercer. I told him that I did not know any reason for the decision, why it had occurred to me and felt it was a disappointing and bad decision. I told him that our office had made great strides from where we were when I took over the office as United States Attorney and where, due to our management and leadership, our office now was in terms of work, case productivity, effectiveness, office morale and many of the topics that were necessary in considering a well-run, effective and efficient office. I told him that I, and my management staff, had "righted the ship" after the previous administration's management concerns and issues that I had inherited and was moving the office forward effectively and in a positive manner despite severe budget and manning shortages. I detailed for him a number of major problems in our office that I had inherited and was able to successfully work through. AAG Mercer explained to me words to the effect that the administration had a short two-year window of opportunity to put an individual into my United States Attorney's position in order to have the experience of serving as United States Attorney, have that title and experience on his or her resume so the Republican party would have more future candidates for the Federal bench and future political positions. Serving as a Presidential appointee, I knew the prospects that I could be replaced and that replacement could be done for no reason whatsoever or for such a reason. I had come to accept that and could accept the fact

that after 5 ½ years of outstanding service I was being replaced solely to open up my position for another individual without any cause for my removal. I was very disappointed by the decision though and did not understand why I had been chosen. At that point, I did not know there were others who had received the same telephone call and initially thought I was the only person that had received such a call to step down. In speaking further with AAG Mercer, he seemed to distance himself from the decision process and stated that he had been outside the loop in the decision process and reasons for it. AAG Mercer asked if I had reached out to and spoken with DAG McNulty about what had occurred. I told AAG Mercer I had called DAG McNulty's office but had not yet spoken with him. He recommended that I do so.

I ended up speaking with Deputy Attorney General Paul McNulty concerning this matter. I am uncertain as to who initiated that particular telephone call, although I had attempted previously to contact DAG McNulty about this matter. The only participant in the telephone call was DAG McNulty. Our telephone conversation was relatively short as DAG McNulty had to attend a recital or some family event that evening with one of his children. In the telephone conversation, he alluded to the fact that the decision had come from "higher up" and he made reference to the fact that although he had some input as DAG in the decision process, it seemed to me from his comments that the ultimate decision did not come from him. He stated words to the effect that although he was present during the decision process, he only had "limited input" in the final decision process. I did specifically ask DAG McNulty during that telephone conversation if the call requesting me to step down had ". . . anything to do with my performance or the performance of my office." His response to me was — ". . . that did not enter into the equation." I was given no more specifics, details or information from DAG McNulty as to the reasons for the decision. Due to his having to be somewhere that evening, we ended the conversation. It was a cordial conversation and he stated that he had no problem with me calling him back to discuss the matter further. I have had no further conversations with DAG McNulty on this matter but did speak further with his chief of staff, Michael Elston, EOUSA Director Michael Battle and acting Associate Attorney General William Mercer about this matter.

I had a couple more conversations with EOUSA Director Battle following our initial conversation. I initially spoke with him about the January 31, 2007 resignation date as we had a number of pressing matters coming up in the office such as our 2007 EARS evaluation and I requested additional time before stepping down so I could attempt to smoothly transition our office. In addition to the upcoming EARS evaluation, we had a number of important cases, trials, personnel and budget issues pending that needed management decisions and attention. I requested additional time and consideration before stepping down to address these critical issues. I attempted to address these issues in telephone conversations with Director Battle, AAG Mercer and later with Michael Elston. I remember calling on one occasion and making inquiry of Director Battle as to whether my performance, any issues involving my office or anything my USAO was doing caused any problems or concerns at EOUSA or with the Department. Director Battle informed me that he — often hears issues about various districts or offices — but that he had not received any negative comments, complaints or concerns about me, my performance or my office and had only heard positive information about my office. I remember being called by Director Battle on another occasion and him making inquiry of me of my interest in taking a position as an Immigration Law Judge. That telephone call was from Director Battle and he was the only participant in the telephone call. After a short discussion with Director Battle, I

informed him that I was not interested in such a position.

I had further conversations with AAG Mercer about the January 31, 2007 resignation date as we had a number of matters coming up in the office such as our 2007 EARS evaluation and I requested additional time so I could attempt a smooth transition of our office. AAG Mercer addressed the possibility of other positions for me in the Department of Justice and also addressed the prospects and potential of my being an Immigration Law Judge. Since we were moving toward the Christmas holiday, ultimately AAG Mercer recommended that I consider my future plans over the Christmas holiday and then discuss the matter further with him after the first of the year. I spoke again with AAG Mercer after the Christmas holiday about an extension of the initially requested resignation date of January 31, 2007, our office's upcoming EARS evaluation and future employment prospects. At that point, I was referred to the DAG's chief of staff, Michael Elston, for any further conversations. From that point on, my contacts with the Department of Justice concerning this matter went through, almost exclusively, Mr. Elston. I had a number of telephone conversations with Mr. Elston. They consisted mostly of my attempts to get an extension of the date to announce my resignation and when that date would become effective, i.e. getting an extension beyond the original January 31, 2007 date. We also had conversations addressing public disclosures concerning my resignation, press articles and responses and my frustration with release of information concerning my departure which prompted me to prematurely announce and submit my resignation on January 17, 2007.

As to the above conversations, I recall having limited conversations with some of the other United States Attorneys who testified at the hearing concerning the above information.

2. Outside of the Evaluation and Review Staff reports, please describe any awards, commendations, or other performance-related assessments that you received during your tenure as United States Attorney for the District of Nevada.

The major performance-related assessment for the United States Attorney for the District of Nevada is the Evaluation and Review Staff (EARS) report. During my tenure as United States Attorney, our initial EARS evaluation was conducted March 3-7, 2003 with the on-site legal management and administrative evaluation of the United States Attorney's Office for the District of Nevada. The completion of the evaluation process is noted in a August 4, 2004 correspondence from EOUSA Assistant Director Christopher K. Barnes. That correspondence included the Final Report of the Evaluation of our United States Attorney's Office and incorporates the United States Attorney's response to the draft evaluation reports and all actions taken by our office through the time of the follow-up visit, which occurred on October 28, 2003. It should be noted that the USAO, District of Nevada had been set for its next EARS evaluation on March 12-March 16, 2007. We had already begun putting together our written submissions and reviews and making preparations for that upcoming EARS evaluation. Due to the resignation request on December 7, 2006, I sought a continuation of the dates of that EARS evaluation. Since it appeared likely after that telephone call that a new management team/staff would be put in my place, the continuance of the EARS evaluation would allow whoever was named as my replacement an opportunity to review matters prior to the EARS evaluation. During my tenure as United States Attorney, we had numerous reporting requirements

concerning a number of priorities and programs. During the administration of AG John Ashcroft for instance, we had a specific performance report that we had to complete and submit to EOUSA concerning the work accomplished and priorities addressed in the previous calendar year. As I recall, that yearly office performance report process ceased and was not a requirement of the USAOs after calendar year 2004. Unfortunately, I currently do not have access to all letters, awards and commendations received by my office during my tenure as United States Attorney. I would note I did receive and have retained other correspondence from EOUSA concerning performance-related assessments of my office. On June 6, 2005, I received a 2-page letter dated and signed June 3, 2005, from then EOUSA Director Mary Beth Buchanan concerning the performance of my office. The letter is quite favorable and indicates, among other favorable comments, that “. . . the District of Nevada has effectively dedicated its resources to advocate and implement the Department’s National Priorities.” The letter pretty much speaks for itself about our efforts, high quality of work from our personnel, dedication and outstanding accomplishments. On February 9, 2007, I also received a 1-page letter dated and signed February 6, 2007, from EOUSA Director Michael Battle, in appreciation for my efforts and devotion to duty in applauding those offices who implemented cost savings measures despite the acute “. . . hardships that these reductions imposed on you and your staff given how difficult things were last year.”

3. An e-mail exchange from Brent Ward, Director of the Department of Justice Obscenity Prosecution Task Force, to Kyle Sampson, Attorney General Chief of Staff, on September 20, 2006 references your “unwillingness” to prosecute obscenity cases. Please respond to this.

That simply was not the case. I was never unwilling to prosecute obscenity cases or unwilling to implement any Department of Justice priorities. Rather, we simply did not have available attorney resources at that time to drop other priorities and pending cases to pursue a single, seemingly non-significant target in a matter that was still in the early investigatory stages, had not been fully investigated and still needed substantial work. As for our “willingness” to prosecute obscenity cases, on July 8, 2005, our office submitted its Child Exploitation and Obscenity Initiative for the United States Attorney’s Office for the District of Nevada to EOUSA. That eleven page submission addressed in detail our Child Exploitation and Obscenity Initiative and gave specific details concerning our implementation of the initiative, case prosecution numbers, significant prosecutions, current USAO case numbers, previous historical obscenity prosecutions in the District of Nevada, challenges facing the district in investigating and prosecuting obscenity and steps taken to overcome those challenges. Despite manning and budget shortages, our prosecution statistics showed a substantial increase in the prosecution of child exploitation/obscenity cases from 3 cases in calendar year 2000 to 31 prosecutions in 2003, 35 prosecutions in 2004 and 33 prosecutions in 2005.

As to Mr. Ward’s e-mails, it is interesting to note the timing and language in those particular e-mails. Concerning this issue, I would direct your attention to a good investigative report concerning the adult obscenity issue, the released Ward e-mails and the prosecution of such cases in the Districts of Arizona and Nevada. That article can be found at:

http://www.salon.com/news/feature/2007/04/19/DOJ_obscurity/

The facts show that Brent Ward made an appointment with me to discuss the first and only adult obscenity case in my district that he wanted us to consider for possible prosecution. It should be noted that this was the only investigation of adult obscenity being worked in my district. The case involved a single, seemingly non-significant target. That meeting was scheduled for September 6, 2006. On August 28, 2006, prior to that meeting and even before I had met Mr. Ward or been presented his case, it appears from the e-mails that he had sent an e-mail to DOJ complaining that I would be “providing lame excuses” for not doing the case and was a “defiant USA . . .” (bate stamp DAG 000507-000509). The e-mails released by DOJ include an e-mail from me to Mr. Ward dated August 29, 2006 (bate stamp DAG 000508) which notes the time for the meeting and addresses our office manning concerns. The meeting occurred on September 6, 2006 and included a number of individuals in attendance as noted in the e-mails. Prior to the meeting, I briefed Mr. Ward on our difficult manning situation – being down 8 criminal AUSAs and our noteworthy upcoming trials, i.e. Hells Angels I, II, III, IV, V and possibly VI; USA v. Lance Malone; Doctors/Lawyers case and our 2 upcoming, statewide initiative conferences – our Statewide Terrorism conference and our Statewide Gang Summit/PSN conference, all 3 DOJ priorities, as well as the take-down of criminal cases from our Katrina Task Force, another DOJ priority. We then met with members of the task force concerning the adult obscenity case that was being investigated by Ward’s obscenity prosecution task force. It was obvious from the presentation that the case still needed much work. It was not by any means -- “a good, adult obscenity case” at that point. We agreed after the September 6, 2006 meeting to discuss the matter further. I did not decline to prosecute the case at that point. Since I had a prosecutor scheduled to attend the national obscenity conference at the NAC, I agreed to address the matter further with Mr. Ward following that conference and my discussions with my attorney who would be attending the conference. Mr. Ward agreed. I felt that additional time would give me an opportunity to attempt to further juggle our resources and attempt to find some resources to assign to the case. The obscenity conference was set for early October, 2006. It appears, however, that despite assurances from Mr. Ward to discuss the matter further, on September 20, 2006, he sent the e-mail to Kyle Sampson. I was not aware that such an e-mail had been sent. The first I saw and became aware of the e-mail or any of the alleged concerns of Mr. Ward was when I reviewed the e-mail as part of the DOJ document release pursuant to the request for documents by this House Judiciary committee.

I did end up discussing the adult obscenity matter further with Mr. Ward following the national obscenity conference. I had been briefed on that conference by my Reno Deputy Chief who had attended the conference as our Nevada representative. In October, 2006, Mr. Ward contacted me about the one adult obscenity case that we had discussed at the September 6, 2006 meeting. Since we still had a number of critical manning issues in our office, I addressed a number of alternatives with Mr. Ward concerning the prosecution of that obscenity case. I offered him and any of his obscenity task force attorneys space in my office, grand jury time and our assistance so that his task force prosecutors could bring the case in my district. Mr. Ward rejected that alternative as well as my suggestion to seek another location for the prosecution of the case. Ultimately, Mr. Ward agreed to allow me until after the first of the year to address the case. Our office had hired two new AUSAs - Jeffrey Tao and Michael Chu - who we hoped to have both cleared and on-board in our Las Vegas office after the first of the year. With the hiring of those

two individuals, the return of one AUSA who was on an overseas detail and the resolution of a matter involving another of our criminal AUSAs, it was my hope that I would have more resources available to attempt to address the matter after the first of the year. Mr. Ward agreed to that as a good resolution of this matter. As the above illustrates, I was not "unwilling" to prosecute obscenity cases. I attempted to work with Mr. Ward and his obscenity prosecution task force to address the one obscenity case that they were working in my district. Our resources were way down in that September - October time frame and we had an extraordinary number of major prosecutions, projects and DOJ priority initiatives being worked at that time. I was neither defiant nor offering lousy excuses, just managing my office as best as possible through some very challenging times due to our recurrent budget and manning shortfalls.

4. Are you aware of any efforts to politicize the Department of Justice with respect to its personnel decisions? If so, please explain.

To my personal knowledge, I was not made aware of any efforts to politicize the Department of Justice with respect to its personnel decisions. However, as events unfold, as testimony is given and more documentation and information is released concerning the firing of the eight United States Attorneys, I am at a loss as to why I, as well as several of the others, were asked to resign our positions as United States Attorney. In reviewing the information, I am unable to determine any clear justification or reason for the request that I step down as United States Attorney. Further, the testimony of Attorney General Alberto Gonzales and some of the disclosed information from the interviews of several Justice Department officials, including the testimony of Kyle Sampson before the Senate Judiciary committee, have offered no reasonable, believable explanation for the request and only offered a number of contradictions. As such, I am unable to rule out the possibility that the telephone call I received on December 7, 2006 asking for my resignation may have been due, in part, to an effort to politicize the Department of Justice.

5. Do you know if any representative of any target of your office's investigations or prosecutions complained to either main Justice or the White House?

Not that I have any direct knowledge of, have been told about or have been so informed. Personally, I know of no such complaints nor have I been informed of any such complaints being made to either main Justice or the White House. In the past few months, however, as this investigation has unfolded, there has been growing speculation in that regard. My review of DOJ e-mails, correspondence and other information as well as viewing the testimony of Attorney General Alberto Gonzales and Kyle Sampson before the Senate Judiciary committee has not afforded me any plausible explanation or justification for the telephone call I received on December 7, 2006 seeking my resignation. There have been a number of articles, theories and speculation advanced in the media concerning the USA firings. One of the noteworthy articles of interest pertaining to my situation was an article that recently appeared in the Las Vegas Review Journal on April 1, 2007 written by political analyst Erin Neff. The article is entitled "ERIN NEFF: For it's one, two, three strikes you're out at the Rove ball game". Without any comment on the accuracy of the article and solely for purposes of completeness, I have included the entirety of that article below.

ERIN NEFF: For It's One, Two, Three Strikes You're Out At The Rove Ball Game".
Las Vegas Review Journal, April 1, 2007

Most of the eight U.S. attorneys fired by the Bush administration had a history of either not doing what the GOP wanted or going after a Republican too hard. So far, the only evidence to emerge from Justice Department e-mails is the suggestion that Nevada's Daniel Bogden didn't take a porn case seriously enough. Not only do the e-mails suggest a frantic attempt to justify his firing, they open the door for speculation that Bogden was in the cross hairs for political reasons.

Three cases Bogden's office handled in 2006 -- during the heart of the election cycle -- likely landed on Karl Rove's desk in the White House as the administration closely followed any potential swing in congressional races. And Bogden's firing wouldn't just serve as a vengeful postscript. It would also set the stage for what we have already seen to be Rove's next mission -- securing the presidency and protecting targeted Republican House members in 2008.

Nevada's Jon Porter is one of those targets. That's why he received a seat on the budget-writing Ways and Means Committee, and that's why Rove has already put him on the "priority defense" list. In 2006, Porter had the toughest of his three successful 3rd Congressional District campaigns, narrowly defeating Democrat Tessa Hafen. In late October, just days before the general election, Nevada Democratic Party Chairman Tom Collins wrote to Bogden, asking him to open an investigation into Porter's alleged use of office phones to make campaign fundraising calls. Bogden could have sat on it until after the election. Instead, the Bush appointee promptly forwarded the letter to the FBI to investigate the claims. Local media focused on the case as voters were already casting early ballots. It wasn't until after the election that the FBI decided not to proceed with the investigation.

Call this case strike one against Bogden.

In February 2006, Bogden's office indicted a Reno radio talk show host on charges he conspired with his son to grow and distribute thousands of pounds of marijuana and launder the sales money through his business. The case against Walter "Eddie" Floyd had an unusual political connection. One of the cars seized in the case belonged to Nevada Secretary of State Dean Heller, a Republican who was running for the state's open 2nd Congressional District seat. Heller had appeared frequently on Floyd's show, "Nevada and America Matters," and considered him a friend. It didn't help matters that Floyd was a convicted sex offender, who -- it later turned out -- had failed to register in Nevada.

When news of Floyd's indictment reached Washington, the Democratic Congressional Campaign Committee seized upon it as a chance for Nevada Regent Jill Derby to make up ground on Heller in the heavily Republican district. "The company you keep says a lot about a person, and Heller's ties to a convicted sex offender and drug trafficker speaks volumes," DCCC spokesman Bill Burton said at the time. Derby really had no business thinking she could win the 2nd District because registered Republicans outnumbered Democrats by 49,000. But she still came within spitting range -- Heller won by 5 percentage points -- and won some Republican strongholds in the process. It should be noted that both Heller's and Porter's campaigns were run

by November Inc., a firm founded by consultant Mike Slanker, who chaired Bush's 2004 re-election campaign in Nevada. Slanker also earned "Pioneer" status, raising at least \$100,000 for the campaign. He is now political director of the National Republican Senate Committee, which is chaired by Nevada Sen. John Ensign. On Friday, Floyd was sentenced to four years in prison and three years of supervised release.

Call the Floyd case strike two.

In September 2006, Bogden's office indicted a Reno doctor on charges that he distributed smuggled and unapproved human growth hormone from Israel to an undercover agent who claimed he wanted to look younger. The details of the case are pretty juicy in the medical community, because Dr. James Forsythe was called "one of the five most serious physician offenders known in the state of Nevada" by a state medical board investigator. But the political details are even juicier as they apply to Bogden's firing. Forsythe is the husband of Earlene Forsythe, who chaired the Nevada Republican Party during Bush's 2004 election. He is also the father of Lisa Marie Wark, wife of Republican political consultant Steve Wark.

Earlene Forsythe was well-known to Rove. Back in May 2005 when Sen. Harry Reid called Bush a "loser," she went on the offensive, saying Reid's comments had "stirred the anger of Republicans across the country and here in Nevada." But the anti-Reid bona fides don't end there. Steve Wark managed Richard Ziser's campaign against Reid in 2004, when the White House had hoped a top-tier Republican candidate could "Daschle" Reid's career. Wark also has Bush credentials. In 2004, he established Choices for America, which solicited cash from Republicans to help third-party candidate Ralph Nader qualify for the ballot in states nationwide. His e-mail solicitations suggested he needed to raise \$30,000 to qualify Nader for Nevada's ballot. Wark had said in previous interviews that he thought Nader would make the difference for Bush in Nevada. "I didn't do it for my own health," Wark said at the time.

The Forsythe case, scheduled for an April trial, just might have been strike three.

Bogden is searching his mind to figure out what did him in. He thinks being asked to step down for no reason so Bush could install a new Nevada prosecutor is "political." "I'm not going to speculate," Bogden said of the Floyd, Forsythe and Porter cases. "There's lots of different things mulling through my mind. I really can't venture a guess." When I asked him about Floyd and Forsythe, Bogden mentioned the Collins letter about Porter. "I've got some others, too, but I'm not going to speculate," Bogden said. Ensign believes the obscenity case, which Bogden said he didn't have the resources to pursue, is the reason for Bogden's firing. And while the senator has been critical of the Justice Department, he hasn't called for Attorney General Alberto Gonzales to resign. Ensign has met with Gonzales and Bush about the Bogden firing and said that while he had hoped Bogden could be reinstated, he is pleased the administration is working to find Bogden a new job. Additionally, Ensign said he's been promised more resources for the Nevada office and said Justice officials have pledged to change the system used to evaluate U.S. attorneys. Ensign doesn't buy my three-strikes theory. "It's just a conspiracy, that's all it is -- a fantasy," he said. "I'm in the high 90s that this was just gross incompetence." Stranger fantasies have occurred in this political league. Although Ensign is using an approval rating barometer, Bogden may well have been sunk by his political batting average.

6. During your tenure, were you ever contacted by the Administration, a member of Congress, or congressional staff about any of your office's investigations or prosecutions? If so, please describe those contacts.

None that I am currently aware of or have been made aware of by others. Personally, I was not contacted by the Administration, a member of Congress, or congressional staff about any of my office's investigations or prosecutions.

7. Why should United States Attorneys be able to exercise some degree of independent judgment with regard to particular prosecutions or priorities?

Realistically, each district has its own set of priorities, issues and challenges. One size definitely does not fit all when it comes to priorities and effectively managing a United States Attorneys Office in addressing all the critical law enforcement issues confronting any specific district and that particular United States Attorneys Office. The United States Attorney in each district is the one individual who is most aware of what is going on in his or her district, what needs to be done in that district, best knows his or her district, all available resources and what it takes to be effective in that particular district – be it prosecutions or priorities. Independent judgment is essential to ensure that the United States Attorney and his or her office is best able to do its job and do that job most effectively. That is due to the fact that of all individuals, the United States Attorney in a district knows that district best. Available resources and manning are definitely limited while crime and hot button community issues are not limited. What may be the most important issue in Washington D.C. may not be the most important issue in the district. Therefore, although each United States Attorney has a set of national priorities that need to be followed, in order to maximize effectiveness, needs independence to establish the priorities for that particular district based upon his or her knowledge of that district, the office, its law enforcement partners and all other issues confronting the district. That independent judgment and ability to set appropriate priorities is critical. No one knows better what is going on in a district than the United States Attorney, the needs of that district and its priorities. As to independent judgment with regards to particular prosecutions, although United States Attorneys are political appointees, as are federal judges, once in office they must have an overriding responsibility to justice in individual cases and need to pursue justice without fear of retribution

from political operatives of any administration. Such independent judgment is a necessity to the ultimate working and fairness of our justice system.

8. When a highly respected United States Attorney is abruptly and without explanation removed, what impact does that have on other United States Attorneys and the Assistant U.S. Attorneys in that office?

I think the impact on the offices should be obvious. However, right now I would think the investigation of this matter would be the best vehicle to address the impact of such abrupt and unjustified removals. Other United States Attorneys and Assistant United States Attorneys could

best address the impact these removals have had on their offices. I am not sure if senior officials at the Department of Justice would have an accurate feel or be able to give an accurate assessment of what is occurring in the USAOs in such locations as Arizona, Southern District of California, Northern District of California, Western District of Washington, Nevada, New Mexico, Arkansas and Western District of Michigan. Such an abrupt removal without explanation can have a chilling effect on prosecutions and the work of other United States Attorneys. If each believe their positions may be at risk due solely to the types of cases they are pursuing or the perceived results, the removals may have a chilling effect on cases being emphasized and prosecuted in any district. As for the Assistant U.S. Attorneys in such an office, it undoubtedly has to have an impact on the morale in the office and quite possibly the productivity of such an office. When I was an AUSA, our district went through four consecutive acting United States Attorneys before we finally had a full-time, confirmed United States Attorney serving our district. I know first-hand from that lengthy experience the major effect and negative impact that not having a confirmed USA in our district had on our office. The impact and effects were extremely negative and long-term.

9. Did you ever receive a warning from the Justice Department that your office's priorities would result in you being asked to resign?

No. I never received any such warning nor was I ever given any indication whatsoever that I was not following all Department of Justice priorities. In fact, I thought I had effectively addressed all stated Department of Justice priorities and still believe that I was following all Department of Justice priorities in our programs and office work. That is why the December 7, 2006 telephone call came as such a shock to me. I, as well as my office, were following all of the Department of Justice's priorities and excelled at doing so. As noted below, our terrorism, violent crime, PSN, PSC, gang and drug programs were outstanding, highly regarded and effective initiatives in our district and throughout our district communities. Despite the manning and budget shortages, we still were able to find a way to follow all the many Department priorities and effectively get the job done in our office on behalf of the Department of Justice.

This was best illustrated in a letter that I sent out to my office as well as all of our Nevada law enforcement partners. The letter was sent after I announced my resignation and points out some significant cases and numbers concerning our national and district priorities. The letter was sent out February 26, 2007 and states the following:

I wanted to take a moment to thank you and your agency for all the assistance, cooperation and the partnership we have enjoyed over the last 5 1/2 years. It has been my honor to serve as United States Attorney and my pleasure to have had the opportunity to work with you and your agency in keeping our citizens safe and making a difference in our communities and throughout the state. I have always felt that we work best when we all work together and you and your agency have exemplified that spirit of cooperation and teamwork. For that, the employees of my office and I will always be grateful.

We have achieved much and I owe a great deal of gratitude to you and your agency for

all the things that have been done to allow us to achieve. During the past 5 ½ years, your agency and our office have much to be proud of. Despite a rapidly growing population, budget cuts and manning shortages — what we have done together and been able to achieve together is truly remarkable and a tribute to all for everyone's commitment, dedication and work ethic. First and foremost, we have kept our nation, state and communities safe from terrorist attack — # 1 on the list of national and district priorities. As for guns, violent crime and gangs, our PSN program has consistently been deemed one of the very best in the nation as we have arrested and prosecuted a record number of defendants for gun crimes and gun-related offenses. We have taken firearms out of the hands of felons and put those recidivist offenders behind bars. Our dogged pursuit, investigation and prosecution of violent gang members has made our streets safer. In the area of drug offenses, in that 5+ year period, our office has prosecuted more drug offenders and cases than ever before. Likewise for child exploitation cases/sexual predators — more sexual predators have been prosecuted and imprisoned by our office than in any previous 5-year period. The prosecution of crimes in Indian Country as well as our prosecution of identity theft crimes has also reached a high during that 5-year period. The list of crimes goes on that we have successfully targeted with investigations and prosecutions concerning crime problems and challenges facing our communities.

Our pursuit of public corruption has been extremely effective, had a lasting impact, and best of all — is ongoing. We have effectively, efficiently and successfully covered all of our national and district priorities despite being understaffed and under-budgeted. More notable highlights include our successful prosecutions of several Clark County Commissioners, Rolling 60's and other gang members, several of the Hells Angels, the owner and employees of the Crazy Horse Too, Armstrong, et.al., Wilkie et al., Harley Harmon, Irwin Schiff, Eddie Floyd, Michael Kranovich, Michael Burns, David Whittemore, Heather Tallchief, Gary Wexler, Dr. Nick Nguyen, Greg Carter, Reverend Willie Davis and many more defendants and criminal organizations. We prosecuted and convicted over 50 defendants for identity theft in Operation Speed Trap, and our OCDETF and HIDTA programs have resulted in the successful prosecution of hundreds of individuals for drug offenses. Most importantly, we have numerous significant prosecutions in the works. A visit to the U.S. Attorney's website www.usdoj.gov/usao/nv/ demonstrates the many high-level cases and defendants we have successfully prosecuted over the past 5 1/2 years.

Since our mission is multi-faceted, our work does not just include cases successfully prosecuted by our Criminal Division. Consider the outstanding work of our Civil Division, Appellate Division, Asset Forfeiture Sections and Financial Litigation Unit. The AUSAs in the Civil Division have successfully defended the United States and its agencies in hundreds of cases, to include DOT's efforts to widen U.S. Highway 95, defense verdicts in a multi-million dollar malpractice actions, successful defense of several Title 7 employment litigation cases and the successful resolution of the Elko County/Jarbidge dispute. The Civil Division has increased its filing of affirmative civil cases recovering substantial sums of money. The Civil Division's health care fraud enforcement unit is in the final stage of negotiating multi-million dollar settlements. As for the Asset Forfeiture Unit, from 2002 thru 2006, the unit forfeited and collected more than \$35 million. Similarly, the FLU collected more than \$ 22 million and opened more than 4,600 debts in the past 5 years. In 2006 alone, our office brought over 200 appellate cases to conclusion with a success rate of 84%. All numbers that we, as an office, have

worked hard to achieve and are very proud of. I know as United States Attorney I was, am and always will be extremely proud of the many successes and achievements throughout our office.

As a law enforcement partner, you and your agency share in and are a major part of this success. It has been a wonderful ride and with you and your agency's assistance, it has been an extremely successful one. It has been my honor and pleasure to serve as United States Attorney and the time spent has given me a lasting list of memories, friends and colleagues. I wish you and your agency continued success and the very best in the future.

10. When you were notified by EOUSA Director Michael Battle that you were being asked to resign, did he give you any explanation why this was being done?

I received the telephone call from EOUSA Director Michael Battle on Thursday morning, December 7, 2006. The telephone conversation was fairly brief and in that telephone call, Director Battle informed me that I served as a Presidential appointee and that it was time for me to step down. He had few details about the reason for the call other than to note that we all serve at the pleasure of the President. When pressed on the decision, he stated that the decision had been made by others and that he had not been part of the decision-making process. When I pressed him further on the decision, he stated that they wanted my office to "move in another direction" but could not give details as to what that direction was or why. I asked him who I could talk to about the decision to learn more about why the decision had been made concerning me and he stated, he had thought about who he would speak to if he had received such a call and he would try calling the Deputy Attorney General Paul McNulty.

11. What effect, if any, did the Administration's annual budget cuts have on your office?

The annual budget cuts had a major negative impact and effect on our office. The budget cuts were a constant concern in the office and a major management challenge to our office being able to effectively do our mission. Despite an increasing office caseload and workload, the annual

budget cuts forced us to not fill personnel vacancies in order to make budget. Less manning in the office forces the staff to constantly and consistently attempt to do more with less. There is a limit to always functioning at that do more with less level. That may be a do-able task in the short term, however, attempting to continue to do more with less year after year has an impact and takes its toll not only on what the office is able to accomplish but also on morale, longevity and the ability to retain top performing employees. Also, as the case complexity level and prominence of prosecution targets increases, the cost of doing complex litigation also increases substantially. These are all issues that had to be constantly considered and addressed due to budget/manning challenges and annual budget cuts which had a negative impact and effect upon not only our office and staff but also on our law enforcement partners.

12. Did these budget cuts have a disproportionate effect on your office? If so, please explain why.

Yes, especially in Nevada. The population growth and statistics concerning the District of Nevada are astounding and ever increasing. For reference see the state demographer's website at http://www.nsbdc.org/what/data_statistics/demographer/. That is where official demographic statistics for the State of Nevada can be located. Further, some of the below statistics also come from the Las Vegas Convention and Visitor's Bureau site located at: <http://www.lvcva.com/press/statistics-facts/index.jsp>.

Some of these factors include the fact that Nevada is the fastest growing state or 2nd fastest growing state in the United States for the last 20 years. The current population is 2.6 million (as of end of calendar year 2006) - and is expected to grow to 4.4 million in next 20 years. Approximately 43 million tourists visit the State of Nevada per year including approximately 38 million tourists per year in Las Vegas, including 6 million convention delegates. Approximately 70 percent of the population of the state resides in the Clark County/Las Vegas area. The city of North Las Vegas is the second fastest growing city in the nation while the cities of Henderson, Las Vegas, and Reno are in top 50 fastest growing cities in the country. From a land mass perspective, Nevada is the 7th largest geographically sized state in the United States with 87% of the state being federally-managed which creates a number of land management and other enforcement issues to be addressed by the United States Attorneys Office. There also are 31 Indian tribes/reservations/colonies located in the state which creates a great number of Indian Country issues and enforcement challenges. Further, Nevada's Hispanic population grew by 44 percent from 2000 to 2005 and now makes up nearly a quarter of the state populace. These are just some of the unique issues faced by our United States Attorneys Office in the State of Nevada. All these factors and other factors considered, our district was budget short and down approximately 15 % of our staff due to being forced to maintain vacancies due to budget shortfalls and constraints. We were supposed to have 45 AUSA Full Time Equivalent (FTE) and only had about 39 AUSAs thereby being forced to keep 6 positions vacant to continue operating our budget in the black. Due to the size and workload of the district, we maintained and fully staffed two offices – one in Las Vegas and one in Reno – in order to cover all our federal courts in Las Vegas and Reno and to effectively address the criminal, civil, administrative and appellate workload throughout the State of Nevada.

13. What effect did these budget cuts and lack of personnel have on the ability of your office to meet the Justice Department's myriad priorities?

It continually created management challenges for an understaffed and undermanned office attempting to address increasing crime problems and issues throughout a very large district with an exploding population growth. As noted above (question 9), we felt we were meeting the Justice Department's myriad priorities but it was with great difficulty, capable management and much work effort.

14. Did your office request additional resources from the Attorney General? If yes, were your requests granted or denied? If denied, were you told why?

Yes, we consistently requested additional resources from EOUSA and the Attorney General. Due, however, to the budget difficulties experienced throughout the Department of Justice, we

were well aware of the limitations on our receiving any additional manning, budget or resources.

We were denied increases and additional resources due to the budget predicament being confronted throughout the Department of Justice and United States Attorneys community. We knew in FY 2005 and FY 2006, that we were going to have to “beg, borrow and steal” just to be able to make budget. When vacancies occurred, due to budget shortages and constraints, we were not able to fill positions. On March 31, 2006, when Attorney General Gonzales personally visited our Las Vegas office, he was specifically asked about our allotted FTE manning, vacancies and actual filled positions and our prospects of filling our vacancies. AG Gonzales let me know that due to our budget concerns, we would not be getting any additional resources or be given additional budget to fill our vacant FTE positions.

15. Did your office experience any hiring freezes during your tenure?

Not per se hiring freezes. Basically we did not have the appropriate budget to fill the needed positions so we were unable to hire. In the USAO, in order to hire a position, an office needs FTE (Full Time Equivalent) plus the necessary budget availability before a position can be hired and filled. In the case of the USAO, District of Nevada, we had justified and earned the FTE for our district but we did not have available budget in order to fill positions. Therefore, in calendar years 2005 and 2006, we were forced to maintain vacancies in order to make budget. For instance, for those calendar years, our FTE allowed us approximately 45 attorneys, however, due to the budget crisis, for most of that time period, we could only fill 39 attorney positions. In February 2007, our organizational chart for the USAO for the District of Nevada showed we had a total of 38 Assistant United States Attorneys in the office while our Full-Time Equivalent (FTE) should have been 45 Assistant United States Attorneys in the office.

16. How many Assistant United States Attorneys did your office have when you started and completed your tenure as United States Attorney?

In December 2001, our organizational chart for the USAO for the District of Nevada, showed we had 34 Assistant United States Attorneys in the office. In February 2007, our organizational chart for the USAO for the District of Nevada showed we had a total of 38 Assistant United States Attorneys in the office while our Full-Time Equivalent (FTE) should have been 45 Assistant United States Attorneys in the office. To be exact, our official FTE in February 2007 showed our district FTE allotment was 44.8 FTE plus 1 USA for a total of 45.8 FTE attorneys (rounded up to 46 FTE attorneys) and 43.72 FTE support staff (rounded up to 44 FTE support staff).

Questions for Daniel Bogden, Esq.

1. When you were a U.S. Attorney, did you understand that you served at the will of the President?

Yes.

2. Did you serve out the full, four year term of your appointment?

Yes.